

Response to Office Action Mailed September 10, 2009
Examiner: Gary K. Graham
Serial No. 10/538,084
Docket: VAL 203 P2

REMARKS

Before addressing the rejections, Applicants wish to thank Examiner Graham for his careful review of the application. As stated later herein, Applicants respectfully request an interview with Examiner Graham if Examiner Graham believes that the pending claims do not place the case in condition for allowance.

Applicants wish to point out to the Examiner that a Preliminary Amendment was filed with the application, but such amendments were not shown in the published application (U.S. Publication No. 2006/0156502). Applicants request that the Examiner enter this Preliminary Amendment, which conforms the application to U.S. practice.

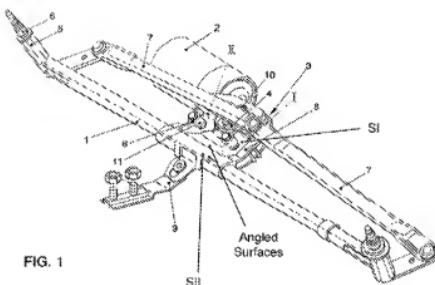
On page 2 of the Office Action, the Examiner traversed the Applicants' statements regarding the election. Applicants will not reiterate its basis for the objection here, but respectfully requests that the Examiner consider rejoicing all non-elected claims if agreement on allowable subject matter with a generic claim can be reached.

On page 3 of the Office Action, the Examiner rejected claims 1, 2, 4, 6, 7, 10, 11, 16 and 17 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended the claims as shown and believe that they are now in good form.

On pages 4-5 of the Office Action, the Examiner rejected claims 1, 10, 11 and 16 under 35 U.S.C. 102(b) as being anticipated by Ostrowski (German Patent 10011842). The Examiner stated various reasons for the rejection. In view of the claims as now presented, for the reasons presented earlier and also for the following reasons, Applicants respectfully believe that these claims are not anticipated by Ostrowski.

Ostrowski discloses a wiper mechanism shown as follows:

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As understood, Ostrowski discloses the stops 11, B. However, it should be apparent that the swaying arm 4 in Ostrowski cannot start outside the pivoting zone because of the angled surfaces SI and SII as labeled above. As understood, it would seem that the end of the swaying arm 4 in Ostrowski would engage the surface SII if it were outside the pivoting range as defined in Applicants' claim 1.

In this regard, Applicants have further amended claim 1 to clarify that when the swaying element is in the first mounting position it is outside the pivoting range, but is driven into the pivoting range, and after such pivoting, the at least one stop may be mounted on the housing to delimit movement of the swaying element from within the pivoting range to outside the pivoting range.

In no reasonable interpretation of Ostrowski does it appear that the swaying element 4 starts outside the pivoting range, moves into the pivoting range and then becomes delimited by at least one stop after its movement into the pivoting range. It appears that the Examiner is using the teaching of Applicants' disclosure in his interpretation of the Ostrowski reference and such use is improper.

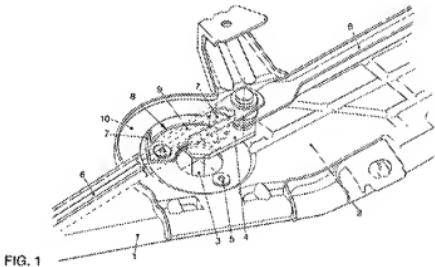
For all the foregoing reasons and in view of the claim 1 as now presented, Applicants believe that claim 1 is not anticipated by Ostrowski.

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Claims 10, 11 and 16 are dependent claims and contain limitations in addition to the limitations of claim 1 and for the reasons stated earlier are also not anticipated by Ostrowski. Again, Applicants respectfully submit that to have a proper anticipation, the reference must teach of each and every element of Applicants' claims as now presented. These dependent claims, when viewed in combination with the limitations of the independent claim 1 from which they depend, cannot be anticipated by Ostrowski. Accordingly, they should also be allowed

On pages 5 of the Office Action, the Examiner rejected claims 1, 2, 4, 6, 10, 11 and 16 under 35 U.S.C. 102(b) as being anticipated by Ostrowski (German Patent 10125988). For the reasons stated earlier herein and also for the following reasons, Applicants believe that these claims are not and cannot be anticipated by Ostrowski.

Ostrowski teaches of a wiper arm having the following construction:



Note that the stops 7 are permanently secured to the housing with the screws 5 as Applicants understand the teaching. There is simply no teaching in Ostrowski which suggests that the swaying arm begins in a mounting position which is outside the pivoting range and then the element 9 mounted to the housing after the arm is moved into the pivoting zone. Indeed, it would appear that the arms 6 of the housing would

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clearly prohibit this teaching because it would be difficult if not impossible to mount the screws 5 if the arm were outside the pivoting range. Note that the two stops 7 are integral with the plate or element 9 which, as understood, is mounted to the housing 2. Applicants can find no teaching in the reference which suggests that the swaying arm 4 be pivoted from the out-of-pivoting range position to within the pivoting range.

Again, Applicants have amended the independent claim 1 to recite that when the swaying element is in the first mounting position, it is outside the pivoting range, but is driven into the pivoting range and after such driving the at least one stop may be mounted on the housing to delimit movement of the swaying element from within the pivoting range to outside the pivoting range. There is no teaching in either of the Ostrowski references which suggests the limitation of the swaying element being outside the pivoting range, and then being moved within the pivoting range, and then at least one stop being mounted to prevent movement of the swaying arm outside of the pivoting range.

For all the foregoing reasons and in view of the claim 1 as now presented, Applicants respectfully submit that claim 1 is not and cannot be anticipated by Ostrowski.

As to dependent claim 4, note that Applicants have recited that the wiper drive comprises a support frame and the at least one add-on element is suitable for exerting a retaining function for a connection between the housing and the support frame. In this regard, note that the stops are not only part of the add-on element, but that the add-on element performs a dual function in that it also secures the support frame to the housing. Clearly, the Ostrowski references cannot and do not teach of such limitation.

Claims 2, 6, 10, 11 and 16 are dependent claims and contain limitations in addition to the limitations claim 1 and any intervening claims. Accordingly, it is believed that these claims are also not anticipated by the Ostrowski references.

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On pages 6-8 of the Office Action, the Examiner rejected claims 7 and 17 under 35 U.S.C. 103 as being unpatentable over Ostrowski ('988) or Ostrowski ('842) in view of Armbruster et al. (German Patent 26,36,419) or Ostrowski ('988) in view of Armbruster et al. In view of the claims as now presented, for the reasons discussed below and also for the reasons stated earlier herein relative to the prior rejections based on the Ostrowski references, Applicants respectfully traverse the rejection and believes that these claims are not obvious in view of the cited references.

First, Applicants can find no teaching or suggestion in the references which suggests that they be combined as the Examiner is proposing. Moreover, even as combined, the references still fail to teach of the combination of elements of the dependent claims when viewed in combination with the independent claim 1 from which they depend either directly or indirectly. For example, claim 7 requires that the add-on element is a part made of sheet metal and that the at least one stop is integral with the sheet metal. Even if one were to consider the element 8 or 9 of Ostrowski ('988) to be made of sheet metal, the reference would still fail to teach of the other elements of Applicants' claim 1 for the reasons stated earlier herein relative to the rejection of claim 1 based on this reference. Accordingly, even the modification of Ostrowski ('988) as proposed by the Examiner, fails to teach of Applicants' independent claim 1 and therefore cannot teach of the dependent claim 7 and dependent claim 2 from which claim 7 depends.

For all the foregoing reasons and in view of the claims as now presented, Applicants believe that claim 7 is not obvious over the cited reference and should be allowed.

Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski ('982) in view of Armbruster et al. For the reasons stated earlier herein relative to the Ostrowski ('842) rejection, in view of the claim 1 as now presented and

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also for the following reasons, Applicants believe that the claim 17 is not unpatentable over the cited combination.

Again, Applicants can find no teaching which suggests that any part of the Ostrowski ('842) be modified with the Armbruster et al. welding 19. Applicants note that the swaying element, as understood, in Ostrowski appears to be releasably fixed to the output shaft and not welded. There would simply be no motivation to provide the additional step of providing a weld of the swaying element to the output shaft, which would increase the assembly time and perhaps the overall expense of the wiper system of Ostrowski. Accordingly, Applicants believe that it is not obvious to use the teachings of Armbruster et al. to significantly change the operation and assembly of the Ostrowski device for the reasons mentioned. Accordingly, Applicants believe that claim 17 is not unpatentable over the cited combination.

For all the foregoing reasons and in view of the claims as now presented, Applicants believe that these claims are neither anticipated by nor obvious in view of the cited references and should be allowed.

The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-1287. Applicants hereby provide a general request for any extension of time which may be required at any time during the prosecution of the application. The Commissioner is also authorized to charge any fees which have not been previously paid for by check and which are required during the prosecution of this application to Deposit Account No. 50-1287.

Applicants invite the Examiner to contact the undersigned via telephone with any questions or comments regarding this case.

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APPLICANTS RESPECTFULLY REQUEST AN INTERVIEW WITH THE EXAMINER IF THIS AMENDMENT DOES NOT PLACE THIS CASE IN CONDITION FOR ALLOWANCE.

Favorable action on the merits of the application is respectfully requested.

Respectfully submitted,
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December 2, 2009

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